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COMPENSATION OF JUDGES.

The argument is opened by the statement that the payment of insufficient and, in fact, insignificant salaries to American judges is a habit, not a principle nor a matter of expediency with the American people. Otherwise one would despair of civilization in the light of contrasted expenditures for luxuries presently to be given. The most generous people on earth live within the jurisdiction of the Courts of the United States, if one may measure them by usual conduct and as emphasized by their munificent gifts to the needy of the World War. American wages are notably the highest paid in the world. That Americans are willing to pay for what they want is axiomatic. That they want much is evidenced by statistics.

"Commerce and Finance," a highly respected financial paper, recently published a detailed statement showing that $5,000,000,000 were spent during the year 1920 for luxuries, or for unnecessary things. No good purpose will be served by itemizing expenditures for soda water at half a billion dollars, or candy at nearly the same amount, for the thoughtful reader is already converted to the points we set out to emphasize, viz.: that Americans want the best and are willing to pay for it, which includes the administration of justice, and the reason for their apparent parsimony towards the courts is ignorance of the truth.

In the first place, let us have an understanding about the thing of which we are conversing. Daniel Webster simply repeated an old truth when he said that Justice was the greatest interest of man on earth. Men pray for justice and live and fight for it. It was the inspiration of the Magna Charta and the Declaration of Independence. It is the essence of the American spirit and without it there would be no such thing as equal opportunity, civil liberty or property rights. The administration of justice is the excuse for government, if it be not its only reason for existing.

It will be conceded, therefore, that justice is of greater importance than candy and soda water, yet the money paid for each in the United States belies that fact. Which becomes important in the light of the premise that Americans are willing to pay for what they want. It has just been shown that there was spent in America, $5,000,000,000 for luxuries in 1920. That averages substantially $50.00 for each man, woman and child. Now the courts of the several states, both trial and appellate, cost the several states on an average of a little less than *eighteen cents* per person per year. This is the corollary to that proposition: Americans set small value on justice, they value it and are unwilling to pay for it, or they are ignorant of the facts. In plain language, a proud Anglo-Saxon race, the rightful and boasting descendants of the creators of the two greatest charters of liberty and justice on earth and the sole legatees of the great American Republic, pay, through state agencies, eighteen cents apiece a year for justice, and fifty dollars apiece a year for soda water and other luxuries. Additions by counties and cities will add unappreciably to these figures. There is acceptable authority that only twelve cents a year is paid out in judicial salaries. That would be $12,000,000, divided amongst a little over 100,000,000 people.

By attributing the wicked condition to the ignorance of the public, a foundation was laid for indicting the Congress and State Legislatures. Their excuse for parsimony is the unwillingness of their constituents to pay. Is this not a false indictment of a practical and a just and a generous people who are willing to apply in the administration of justice the same

economic principles that rule their respective businesses and their social lives? Thirty-six cents a year per capita would double the present compensation of the judges!

The Federal Government on September 20, 1920, issued a pamphlet called "Financial Statistics of States, 1919." The figures given above were taken from the official publication by A. B. Andrews, Jr., in an article that appeared in the West Publishing Company's "Docket" for May-June, 1921. The exact citations are given in order to stimulate research by both statesmen and citizens, for if Americans are really unwilling to pay but *eighteen cents* a year per capita for the administration of justice, as Legislators would persuade one to believe, it would be a serious reflection upon their sanity. It is in order to ascertain whether it is the people or it is the Legislators that wish to use the tax money for other purposes.

The great United States, the richest nation on earth and with the most at stake, pays its Chief Justice, the man holding the highest judicial position in civilization, but $15,000 per year. It is, of course, the great honor and not the compensation that makes the place attractive. Now, has democratic America the right to compensate in that currency? If so, why not create a few "dukes," "counts" and "baronets," and thereby extend the circulating medium to other services. It would certainly require less gold. The judge of a trial court in England receives $25,000 a year; holds office for life and receives a pension of two-thirds of his salary when retired for age or disability. Is not rich America able to do as much? Is not England justified in this course after nearly one thousand years of experience? Strong financial inducement for the best judicial material has always been the English policy. To that policy may be attributed some of the merit of the great common law, which is the basis of American law today, and which our forefathers preserved to us while cannon yet roared defiance in the Revolutionary War. Judges were paid enough to be rid of financial worry as to themselves and the future of their families, and to justify the application of their whole thought, energy and time to the improvement of the law and its administration. They had no outside diverting interests or temptations.

Moreover, it is not unreasonable that the Congress and Legislatures should see the matter in their own interest for, though they fill the statute books with the wisdom of a Solomon, a law is no better than the manner in which it is administered. The present policy of Congress and State Legislatures may be likened to a city that built a magnificent reservoir, filled it with plenty of pure, potable water, but then put in insufficient and occasionally foul pipes in which to convey it to the people. Just as the pipes measure the quality and quantity of water actually received by the people, regardless of the contents of the reservoir, so the courts measure the quality and character of justice received by the people, regardless of the high merit or the substantive law. Statesmen, then, should be selfishly interested in competent, well paid judges. One often wonders if they ever see it in that light.

We started out to prove that the American custom of low compensation of judges was a habit. It is a Legislative habit—a mental attitude. In pre-Civil War days the country squire was a landed gentleman and felt it a duty to serve his county without charge. Several of these squires composed the County Court. After the War of Secession the positions of County Judge and local magistrate took their places at a small salary. There have been other changes, but the records show that compensation was but slightly increased. There were always men willing and able to fill the positions in the interest of the general welfare or on account of the honor attached. There are still plenty of competent men willing, but few able, to serve as judges without suitable pay.

What is the solution of this dangerous problem? How shall the country call men of John Marshall calibre to the Bench and retain them, to the continued glory of American jurisprudence, that the American genius of government shall go onward and upward, and not backward and downward? It is by paying judges a compensation that will set them independent for life of pecuniary cares for themselves and their families, by giving them an assured tenure of office that will justify the sacrifice of their private business in the public interest. This will attract men of the highest qualifications and stimulate preparation for the sacred office.

How shall these things be done? First, by bringing the Legislative Department to see that the Judicial Department is a fixed limitation upon its own work. That the laws enacted by them will be well or badly administered, accordingly as there are maintained good or bad courts. That in order to have good courts there must be competent judges. That in order to secure competent judges there must be adequate compensation. Secondly, the legislative excuse that the people refuse to pay must be refuted by the people. Will they do it? The answer is to find a man willing to admit that thirty-six cents a year per capita is too much to pay for justice. It will hardly be necessary to contrast the expenditure of $50.00 per year per capita spent for luxuries, as a further argument, for that would be producing shame and not inspiring patriotism.

Tell Americans the truth and the truth will set them free from the bondage of legislative parsimony. Tax money is simply being diverted to things not so vital and essential. That is the trouble. The habit must be broken and the American press can do it. Let us ever be mindful that inadequate compensation is a dangerous element in positions of trust.

THOMAS W. SHELTON.

NOTES OF IMPORTANT DECISIONS.

BONUS SHARES NOT SUBJECT TO ENGLISH SUPER-TAX.—A recent volume of the English Reports publishes the opinion of the House of Lords in the case of Inland Revenue Commissioners v. Blott, 123 L. T. Rep. 516: (1920) 2 K. B. 657. In this decision the Lords held as did our Supreme Court, that a stock dividend ("bonus shares" the English call them) is not income but capital. The decision was by a vote of three to two.

This case raised specifically the point as to whether the respondent was liable to an assessment to super-tax in respect of bonus shares issued by a company. In this case the company had by its articles of association power to increase its capital and to distribute its profits in the usual manner, including a distribution of paid-up shares in that or any other company. It had also the usual power to create reserve funds. In 1914 the company had available for distribution, including a small carry over, the sum of £61,903. After carrying £10,000 to the general reserve fund and paying a dividend on the preference and ordinary shares, a bonus of 33⅓ per cent. on the ordinary shares was declared on the recommendation of the directors, such bonus to be satisfied by a distribution among the shareholders of shares in the company credited as fully paid. In the year ended the 5th April, 1914, the respondent received as part of such distribution shares, and again a further lot of shares in respect of the year ended the 5th April, 1915. Having been assessed to super-tax in respect of those allotments of shares, the respondent took the point that he was not liable to be assessed to super-tax because the shares allotted were capital and not income. The shareholder had no option but to receive the bonus in shares. The courts below decided in favor of the respondent, and the commissioners appealed.

The Judicial Committee of the House of Lords (Lords Dunedin and Sumner dissenting) held that both in principle and on authority the transaction in this case was one in which the company was in law dominant on the question whether the allotment was to be capital or income for all purposes, and therefore in the circumstances the respondent received neither income nor profits assessable to super-tax.

THE RECENT HISTORY OF THE PSYCHOPATHIC LABORATORY OF THE CHICAGO MUNICIPAL COURT.

The tenth and eleventh annual reports of the Municipal Court of Chicago for the calendar years 1916 and 1917, contain a report of the first three years' work of the Laboratory covering 4,447 cases, making a larger body of facts than has ever been brought together on this subject, it is confidently believed. This epochal report cannot be repeated here, nor can a complete understanding of the situation with respect to crime and defectiveness be acquired from the two reports.

There has been one regret and that is that the available force of assistants has been limited so that the largest possible service could not be rendered. But the force has been large enough to maintain the largest clinic in abnormal psychology which has ever been conducted. It should therefore not be a matter of surprise that no novel facts should be disclosed after nearly five thousand cases had been examined and recorded. Of unusual cases there will possibly never be an end; but no new classes have been found necessary in the three years which have elapsed since the first general report of the Laboratory; no new methods have been suggested; there has been no attack upon the findings of the Laboratory to render necessary any revision of judgment. In consequence of this the present reports are necessarily cumulative and confirmatory.

As to methods it may be said that in every case complete examination is made, embracing physiological, neurological, psychological, hereditary and environmental data. In every case complete written records are made and preserved. Every record is signed by the Director, Dr. Wm. J. Hickson. No report is submitted to a judge which is not authenticated by the Director who remains at all times entirely responsible for every report. This plan has been followed from the first day. There has been no informal reporting, no whispering to judges, no guessing, no evasion of personal responsibility.

Another outstanding feature of the situation is that no finding of the Laboratory has ever been successfully rebutted. Of prejudice and ignorance and mental inertia there has been at all times sufficient, as well as some attempt at hostile criticism in the first year or two of this work. But these have steadily diminished, and as the work of this clinic gains every year, a stronger hold on the opinions of students and all other observers, it is a matter of deserved congratulation that it can be said that in no instance, out of possible thousands, has it ever been made to appear that a wrong diagnosis has ever been made. Thus have the methods of investigation and recording been substantiated by the inexorable tests of experience.

On the contrary the Laboratory can point to innumerable instances of corroboration. The most dramatic and forceful, doubtless, are those corroborations presented by the conduct of subject cases who have been recorded after examination as belonging to a dangerous class of defectives. For instance, there have been thirty or more instances of killing by young men who were at some previous time examined after committing lesser offenses, and found to be of the potentially dangerous type, namely, a combination of low intelligence and abnormal affectivity. As the number of cases increases the community more and more finds the diagnosis of the Laboratory confirmed by the actual life history of defective individuals. It has been said, and is undoubtedly true, that one could go to the index files of the Boys' Court and pick out, among more recent cases, a dozen in which this forbidding diagnosis has been made and say with assurance that within six months one or more of this little group would be arrested charged with murder; within a year, two or more, and so on.

The great, and ever increasing value of the Laboratory is thus seen to be in its proved *predictability* in certain clearly established classes of defectiveness. This is indeed something new, but no innovation; it is simply cumulative and corroborative.

The beginning of an understanding of defectiveness in relation to crime has been said to lie in the distinction between intelligence defects and defects of affectivity. A fairly sharp distinction can be made, and must be understood, as between intelligence, or the capacity for rational thinking, on the one hand, and affectivity (or feeling or emotionality) on the other. Broadly speaking these two main categories embrace the psychological capital of every person.

There is a very general understanding of intelligence defects, the methods for discovering and gauging them, and their consequences, throughout the country. This is a very new branch of science, relatively speaking, especially in this country. Until a few years ago there was no manual on this subject in the English language. It was not until 1912 that the Binet-Simon intelligence tests were first put to a practical use in this country, and then only tentatively, at Vineland, N. J., under Dr. Goddard. But they quickly commended themselves to Dr. Goddard and his staff, replacing guesswork and uncertainty with an unlooked-for accuracy. Knowledge of this subject spread rapidly. For several years now there have been in a number of states numerous investigators in this field of subnormal intelligence. A great deal of substantial knowledge of this subject has been acquired through them. It is generally understood that a person skilled in the use of the Binet-Simon tests could in an hour or two determine subnormal intelligence and give it quantitative rating. This phase alone marks a tremendous achievement. It has thrown a flood of light on a field formerly dominated by guesses, prejudice and controversy.

But the very success of intelligence testing has tended to make further progress difficult. It has afforded to the operator a convenient formula or tool by means of which, with very little effort and limited experience, the subnormal in intelligence could be sorted out and many problems of conduct successfully explained.

Invaluable as they are, these tests have possessed an almost perilous facility; they have been pushed quite beyond their capabilities by enthusiastic investigators who often are not neurologists, or psychiatrists or even physiologists. Such users are unable to qualify their findings by numerous complexes. Their success in simpler cases gives them unwarranted confidence in respect to difficult complexes which are certain to confront them.

The first great vogue for intelligence testing came in the years 1913 to 1917, speaking roughly. By the latter year the more experienced found themselves confronted with an inexplicable phenomenon. It came about in this way: so many inmates of prisons and reformatories had been found defective in intelligence that the investigators had come to look upon intelligence defect as the one overshadowing cause for delinquency. This theory, though incorrect, was in a way justifiable in that stage of the inquiry. But, and here is the crux of the situation, thorough testing of the inmates showed that there were always some who were normal in intelligence, and yet highly mischievous, not to say incorrigible.

This newer body of facts, discovered in time by a number of independent investigators, negatived in a way a theory which not long before had been announced as impregnable. In the past three or four years this has more and more come to be the stumbling block of the investigator who has lacked thorough preparation, as, unfortunately, most of them have, by force of circumstances. As a rule the most hopeless delinquents are not those rated by the Binet-Simon tests. As these more dangerous cases have been observed, the center of study has been shifted, for these have been seen to constitute roughly a class in themselves, and

one which has baffled the ordinary investigator.

Before quitting the subject of intelligence defect it should be noted that a great injustice has been done to this unfortunate class by the earlier judgment that this kind of defect accounted in the main for delinquency. It should be understood that a defect in intelligence is a defect in intelligence—just that and nothing more. There is abundant proof, and no disposition in any quarter to combat the theory that feeble-mindedness does cause a considerable volume of delinquency. But that it accounts scientifically for a typical crime is wholly fallacious.

The feeble-minded person is limited in coherence of thought; his judgment is unreliable and hence his dependence upon others is increased. This means that he is less resistant to environment than normal persons. He is often a victim of suggestion, or influence or threats. He falls a victim to his own appetites. He tends to lack confidence in his own ability to cope with the problems of life, especially where life is a continual battle for survival.

But, on the other hand, there is nothing essentially criminal about the feeble-minded person. The reason for that is that disposition, or temperament, or the will that shapes conduct are only secondarily influenced by intelligence. There is in the mind of every person of normal affectivity a controlling disposition to accord with the standards of conscience; to accord with society's rules; to cling to good and to abhor evil. The sum of these qualities are sometimes called soul, and sometimes called conscience. The person not abnormal in affectivity has no inherent tendency to do harm to others.[1]

The controlling factors of conduct then are beyond the reach of intelligence tests, as investigators everywhere have found out in recent years, so convincingly, in fact, that for the past two or three years their former volubility has been succeeded by a conspicuous reticence.

It is in respect to its explanation of the basic springs of conduct, and so of the ultimate causes for criminality, that the earlier report of the Chicago Municipal Court is most significant. The seat of the emotions is physiologically distinct from the seat of intelligence. (We do not intend to convey the idea that there is not a great interaction between the cortex and the basal ganglia. There must inevitably be continual interdependence between these principal divisions of the brain, but a treatment of them separately is necessary to an understanding of this subject). What the earlier report showed in addition to the accumulated knowledge concerning feeble-mindedness was the entirely distinct abnormality of defect of emotions or affectivity. Any person who accepts the teachings of science that intelligence defects are attributable to definite physical lesions, and who considers the physiological distinction between intelligence and affectivity, will instantly admit the presumption that the basal ganglia must, in the nature of things, be subject to abnormalities of a sort readily comparable with those which produce, in the cortex, intelligence defect.

This is all primary and indeed, quite indisputable. The significance of the last re-

(1) A clearer understanding of the relation of intelligence defect to crime is rapidly supplanting the uncompromising theories of a few years ago. It was, of course, inevitable that knowledge of mental defectiveness limited to intelligence defect should have borne down harshly on the unlucky moron.

There are many feeble-minded persons of both sexes and all ages who have entirely normal emotions. Such a defective may cling to good and abhor evil just as surely as any person of normal or exceptional intelligence. Indeed, persons who have had much experience in this field agree that many of the feeble-minded are quite as lovable and quite as capable of reciprocating love and good treatment, as the normal minded.

Morality is not dependent upon intellectual power to any considerable degree. The feeble-minded are, of course, more likely to make mistakes because of inferior judgment. They are, in a measure, irresponsible. But they may possess all the qualities of character and to the limit of their power resist evil doing. Such cases, and they are numerous, will more readily lean upon and follow good advice than bad.

port of the Psychopathic Laboratory of the Chicago Municipal Court lies in the fact that it classifies the defects of affectivity, and this is the beginning of a true comprehension of behavior or conduct abnormality. Roughly speaking the classes of emotional defect fall into two general categories—the hyperboulic (those who are keyed abnormally high in emotionality), and those having dementia praecox (practically all of whom are subnormal in emotions). In the first class are those whose fantastic mental processes are registered in conduct which is too intense; the excitable, those often with overdevelopment of conscience. In the second class are those more or less lacking in normal feeling. In proportion to the extent of their defects, they lack all the social emotions registered in pity, gratitude, respect, love, obedience, kindness and so forth. They are in the same proportion marked by hardness of sensibility, by cruelty, by selfishness and all other social characteristics.

The conduct of the dementia praecox defects may be and often is, bizarre, as in the cases of the hyper-emotional, but it is also marked by stubborn resistance, by hardness, by cruelty, by a failure to appreciate consequences of a prejudicial sort, both to the victim and to his associates. In plainer language, moral qualities are submerged or actually absent. There is no guiding conscience.

That these commonly observed characteristics are pathologic; that they have standardized symptoms, and especially that they are diagnosable by psychiatric and psychological means, is a tremendous fact which is established by the earlier reports of the Laboratory[2] and which fits all the facts of the situation, and constitutes the greatest triumph of science in our generation.

It is obvious that we have here the springs of conduct far more elemental and more influential than intelligence defect. A person who is feeble-minded may fall into delinquency and is likely to in a difficult environment. But a person with subnormal affectivity will violate social rules under any conceivable environment short of absolute control. This is proved by the failure of the best correctional institutions to reform the victim of emotional subnormality. They are types which may well be called moral defects. They have no inherent controlling instinct to do right because doing right confers pleasurable emotion, as have the normal and the purely feeble-minded. On the contrary they have no instinct but the instinct to gratify appetite and selfish motives, come what will.

The great clinic afforded a psychopathic laboratory attached to the criminal courts of a large city permits of examining a multitude of persons having subnormality in every degree, for it naturally exists in all shadings, from a slight defect to one so great as to make its victim as dangerous as a savage brute. Dementia praecox as explained in the last report of the Laboratory[2] exhibits three principal characteristics: the quality of inhibition, or being shut-in, or resistant; the quality of changeability of character, and the quality of split association processes. The first and the last, as here stated, are practically always present and observable.

But this understanding of abnormal affectivity does not in itself explain criminality. Just as this abnormality may exist in all degrees, just so is it found to be co-existent with all degrees of intelligence. There are numerous cases of dementia praecox in which intelligence is normal. In some cases there is exceptionally good intelligence. Such persons will exhibit erratic conduct, frequently anti-social in nature, but their intelligence, their appreciation of standards of conduct and consequences of immoral and illegal acts is so keen that they may entirely avoid criminal conduct.

In other instances the dementia praecox victim has normal intelligence. He will ordinarily steer a safe course, breaking the law only when his environment imposes ex-

(2) 92 Cent. L. J., 102.

treme pressure, or when temptation is specially severe. It is not that he has any great compunction to live a decent life, but that he realizes the danger of giving way to his appetites and passions. Of course, this will depend not only on the degree of intelligence, and the nature of the environmental stresses, but also upon the degree of emotional defect. There is as yet, and perhaps never will be, a standard measure for gauging degrees of emotional defect. When an expert tests for intelligence he is able to give a definite rating, as for instance, an intelligence equivalent to that of the average of thousands of normal children of the age of eight years. This will be a dependence rating, useful in comparisons. But there is no such simple and positive rating for emotional defect. The psychopathologist must, in his own mind, determine as closely as possible the extent of the defect. Possibly some time there will be a method of standard rating.

Finally dementia praecox is likely to be found in connection with defective intelligence. Here, it is obvious, we have the criminal type, or at least the potentially criminal type, for of course the environmental factor always exists as part of the equation. In the former report, Dr. Wm. J. Hickson[3] used this language: "A defective intelligence is a misfortune; a defective affectivity a calamity, and a defective intelligence and affectivity a catastrophe."

The dementia praecox subject of low mentality living in a competitive environment has little chance, especially during adolescence, when appetites and passions are keen, to avoid criminality. Ordinary avenues to comfort and luxury—even to bare necessities, are closed; the victim cannot hold a job long even if he tries. He takes the shortest course to satisfy his needs. This means some crime involving brutality. The choice of crime will depend largely on the intelligence factor. These victims of dementia praecox and feeble-mindedness break down early in life. They come into conflict with their environment usually at a tender age, as shown by Judge Trude's report on the Boys' Court. They usually have Juvenile Court records. Before they are seventeen they have been in a reformatory. Between the ages of seventeen and twenty they usually commit serious offenses. The best reformatory methods cannot check their drift toward criminality. For them some new institution is demanded, and we hope will be supplied by the 1921 legislature. The tables show cases sent to Pontiac (the boys' reformatory), cases sent there when the examination followed a first term, and also cases which served in Pontiac two or more times.

There is one phase of the Laboratory's work which has been growing in importance in the past two years. It arises from the tendency of police officers and others to gather in suspected persons, many of whom show signs of insanity. Since the Laboratory has not had a force adequate to meet all needs, it has frequently been necessary to favor these cases in making a selection among those offered.

The Laboratory has thus tended to become a clearing house for psychopaths of an active and menacing sort, and for victims of outspoken insanity and other potentially dangerous psychoses. In this connection interest attaches to a table filed with the last report, showing the nature and disposition of one thousand consecutive cases committed to the Psychopathic Hospital and to feeble-minded institutions and asylums after examination in the Laboratory. This list reveals the Laboratory in the role of an active social prophylactic agency.

At the present time commitments based upon Laboratory examinations are being made at the rate of one thousand a year. It is obvious that there is in this a great

(3) Dr. Hickson is one of the few expert psychiatrists in this country. He is a graduate of the University of Pennsylvania and spent two years in the European clinics for the insane, namely, Kraepelin's, Zieben's and Bleuber's Clinics, where the psychological, rather than the clinical method of approaching mental disease, dominates. This article is based on the results of Dr. Hickson's work.

deal more than social adjustment. There must be a great deal of crime prevention. Among these unfortunates are numerous cases of paranoia who are eased of their dangerous psychoses by timely treatment. We cannot gauge the benefits here precisely, but there is reason to believe that there lies in this growing field a great deal of genuine crime prevention. Compared with the millions of dollars which it costs to send a few hundred criminals to prison each year, this side of the Laboratory work illustrates very clearly how one dollar spent in crime prevention accomplishes more than $1,000 spent in punishment or attempted correction after the crime has been committed.

As recently as three years ago there was still a considerable amount of skepticism and open opposition to the findings of the Psychopathic Laboratory. This was not only natural and unavoidable, but actually wholesome. If it were not for its ability to conquer adverse criticism, there could be but little authentic science. But considering the tremendous distractions of war time and the years that have followed, it is really astonishing that the main body of opposition has faded away in so short a period. There is only one phase of this which appears to deserve comment at this time, and that is imagined differences of opinion based mainly on difficulties of an unstandardized nomenclature.

Such disagreement as to terms has been common to all developing branches of science. It is easy enough for an unprejudiced observer to say: "First agree on the terms employed in your science; standardize them and thus narrow the field of controversy and make the issues definite." But this is something which cannot be done forthright, however desirable. Lack of agreement as to definitions must persist for a time. In such a comparatively concrete field as applied electricity, it was many years before investigators could agree upon a standard vocabulary. Until that time the language had to be what each writer conceived to be most appropriate. The uncertainty was finally overcome by the adoption of arbitrary symbols, such as watt, ohm, ampere, free, in their new use, from traditional prepossessions.

The term "dementia praecox" is especially unfortunate, but we employ it because of its standard meaning in European clinics where this disorder was first classified. Its derivation is unfortunate, and it had come to have a different meaning in American use. We have employed it, in part, for lack of any better term.

In Chicago the newspapers have adopted the use of the word "moron," which properly means a person limited in intelligence to the grades represented by average normal children between the ages of seven and twelve, to describe a psychopathic person with psychoses of sexual perversion. This is probably due to the lack of any other word short enough for a head-line. The perversion of the word must be combatted, even though we cannot supply any substitute which will serve the limitations of the head-line writer.

So far as we can judge, the former hostility on the part of "environmentalists" is rapidly waning. While stressing the importance of heredity, there has been at no time a disposition on the part of Dr. Hickson to deny or under-rate the importance of environment. Though viewed as a secondary factor, environment is always a part of the equation, and frequently may be the determining factor. To the student of biology there is no war between heredity and environment. Neither can be eliminated from the problem of defectiveness or crime.

When one says that there is no cure for mental defectiveness, he means that inherited maladjustment of any part of the brain cannot be rectified in the nature of things. But the consequences of such defect may be in a measure offset and minimized by control of environment. There still remain great and necessary steps for the saving of the individual and the protection of society in which environment control, extending all

the way from hospital treatment or long prison terms to probation, is a main reliance.

There will always be crime because there will always be individuals whose inherent powers and reactions are far below the normal of social and legal standards. A raising of these standards automatically increases the number of delinquents. In our intensive civilization many acts are crimes which in a primitive society would be but little out of place and among savages rate as virtues.

But at the present time there is a great deal more crime than is necessary, especially of the more brutal kinds. All over the country we hear of crime waves. Even discounting the excess due to transitory causes following the war, there is left in the United States a great body of preventable crime. Attempts have been made to excuse this on the ground that lawlessness of all kinds is inseparable from political liberty. This reason fails when we compare our conditions and our crime statistics with such democratic countries as Switzerland, Norway and Canada.

The psychopathic laboratory in connection with a criminal court enables us to test practically the operation of penological theories to ascertain how they have actually worked in the cases of specific individuals. This is but carrying the scientific method into a new domain, comparable in principle with experimental tests made in recent years with respect to physiological theories. We have seen, in the latter field, how opinions, hoary with tradition and supported by many illustrious names, have been destroyed by simple practical tests carried out in the unprejudiced spirit of scientific inquiry.

The scientific method has been by no means restricted, in practical investigation, to physiology. A vast new basis for the materials of industry has been created through analytic and synthetic chemistry —the work of the patient laboratory investigator—incalculably augmenting our wealth, in the past few decades. In such eminently practical, and equally scientific fields as agriculture and animal husbandry a revolution has been worked; many inherited theories have been junked; others have survived and received scientific explanations, and many new reactions have been observed and given place in a scheme of natural law.

In method and purpose modern psychopathology now takes its place among these great studies for human advancement. Its laboratory is comparable with the laboratory of the physicist, the chemist, the metallurgist, the zoologist, the biologist; in broad terms its methods are identical. The material is intensively studied from every angle and classified in accordance with its nature and reactions. Of course the particular technique of the psychopathic laboratory is pecular to itself, having but little in common even with such a closely allied field as normal psychology.

Until recently, in our own country, at least, there has been no conveniently accessible body of material available for this study. The criminal court clinic and the segregation of defectives are of recent origin. The clinics are at present, and probably will for a considerable time be, more varied in material and more fruitful than the institutions for detectives, which are only just coming into being.

The keeping of precise, signed records by the Laboratory not only conserves personal responsibility, but also makes it possible to abstract information on any category, with individual figures and averages. It is possible, as illustrated by the numerous tables accompanying the earlier report, to show the situation with respect to any class of offenses, or any age group, either sex, or any of the various types of defectives. By this means all the information acquired in routine work remains available for comparison and analysis criminology, and to some extent sociology, derives from this body of knowledge proved laws which can be relied upon.

The following are some of the deductions which appear justified by more than six

years of systematic and consistent intensive study, covering nearly 20,000 cases:

1. The entire crime problem is largely a problem of adolescence. Few serious crimes are committed by persons who have not revealed wayward conduct before attaining their majority.

2. The boys between the ages of sixteen and twenty-one who commit the more serious offenses are found to have records of conflicts or criminal conduct extending back to an early age. This emphasizes the need for identifying these individuals at the beginning of their careers if there is to be successful prevention of crime.

3. Until recently crime prevention has implied two things: first, enough patrolmen to make the commission of crime difficult; second, sentences to effect reformation and to deter potential delinquents. The first theory has some validity, but does not reach very far. The second has been seen to have a measure of falsity ever since correctional methods were applied. Knowledge of mental defectives explains readily why certain individuals are not deterred by the punishment of others, or even by their own punishment.

4. Crime prevention is now seen to imply control of that relatively small element, which because of mental abnormality, fails to react properly to correctional or punitive treatment.

5. The first step, obviously, is to identify and tag these individuals. The first preventive work will probably in time be that done among backward and incorrigible pupils in schools, both public and parochial.

6. The ordinary routine of confinements for short periods is wholly ineffectual in the cases of defectives. Reformatories can not really correct the essentially dangerous individuals, those having defective emotionality coupled with inferior intelligence. On the contrary, these individuals corrupt the purely feeble-minded inmates, making endless trouble for the managers. Such cases also tend to bring probation methods into disrepute.

7. In practically every case a serious offense is committed only by a person who has a record of lesser offenses. *Serious crimes are committed between prison terms.* Periodic liberation of the dangerous types is certain to result in failure.

8. With present experience continued instances of delinquency impute mental defectiveness, the nature of the offense usually defining the type of defect.

9. Real prevention implies the establishment of an institution, or possibly several for different grades, in which dangerous defectives can be segregated to receive appropriate treatment, largely of an occupational nature.

10. It is highly important that the intimate relation between delinquency and defectiveness be understood by all persons concerned with handling of delinquents, to the end that suspected cases be examined before being placed on parole from prisons. Many murders could be prevented by sending incorrigible boys from Reform Schools to a farm colony, instead of releasing them to continue their hopeless careers.

11. The prevention of brutal crimes, which is the crux of the crime problem, must come through recognition of the problem as one of mental defect. Moral defects are embraced in this general term. Reform of rules of criminal procedure is a minor consideration. The problem is mainly that of psychopathic study and subsequent adminstration.

12. There is really nothing new in the situation except the means, through psychological and psychiatric means, to detect and classify mental defectiveness. It has been accepted for generations that some delinquents would be reformed through punishment, or correctional treatment, and that others would only be rendered more helpless. Until recently there has been no way to sort out the delinquents and apply appropriate kinds of treatment to the two classes.

The only way was to treat them all as reformable until such time as every means failed and a crime sufficiently crass was

committed to justify a long sentence. This was a classification based on the trial and error method. The errors constituted the heart of the crime problem.

HARRY OLSON.

Chicago, Ill.

MASTER AND SERVANT — WORKMEN'S COMPENSATION.

CLARK v. VOORHEES.

Court of Appeals of New York. April 19, 1921.

131 N. E. 533.

Where an employee left his employer's place of business for the purpose of going to a restaurant between 400 and 500 feet away for a cup of coffee and was struck by a motor truck while in the public street, the injury did not arise out of the employment or in the course of the employment within the Workmen's Compensation Law.

McLAUGHLIN, J. This appeal is from an order of the Appellate Division, Third Department, affirming, two of the justices dissenting, an award of the State Industrial Commission, made under the Workmen's Compensation Law (Consol. Laws, c. 67) to the widow of John C. Clark.

The facts, as found by the State Industrial Commission, are that Clark, for some time prior to his death, was employed as a salesman by William Voorhees, a wholesale dealer in fruit and vegetables. Early in the morning of May 30, 1918, Clark left his employer's place of business for the purpose of going to a restaurant between 400 and 500 feet away to get a cup of coffee. While in a public street going to such restaurant, and between 250 and 300 feet from the employer's place of business, he was struck by a motor truck carrying United States mail, and sustained injuries from which he died shortly thereafter.

The validity of the award affirmed by the Appellate Division is challenged by the employer and insurance carrier on the ground that the injuries which resulted in Clark's death did not arise out of and in the course of his employment.

I am of the opinion that the injuries which Clark received, and which resulted in his death, did not arise out of and in the course of his employment. The words "arising out of and in the course of the employment" have a clear and definite meaning, and an award can be made under the statute only when the injuries arise out of both. Matter of Schultz v. Champion Welding & Mfg. Co., 230 N. Y. 309, 130 N. E. 304; Matter of Daly v. Bates & Roberts, 224 N. Y. 126, 120 N. E. 118; Matter of Heitz v. Ruppert, 218 N. Y. 148, 112 N. E. 750, L. R. A. 1917A, 344. This injury did not arise out of either. When the decedent left the employer's place of business for the purpose stated, and while walking in the street, he was not doing anything which he was employed to do; nor was it anything incident to or connected with the employment. It was no more a part of his employment than it would have been had he started for his own home for the purpose of getting his breakfast. The business of the employer ended when he got into the street. Armstrong, Whitworth & Co. v. Redford (1920), App. Cas. 757; Davidson v. M'Robb (1918), App. Cas. 304. While on the way to the restaurant he was engaged in his own personal affairs.

This court has recently held that, where an employee was injured while on his way to the place where he was to render service, such injuries did not arise out of the employment and were not connected therewith (Matter of Kowalek v. N. Y. Consolidated R. R. Co., 229 N. Y. 489, 128 N. E. 888; Pierson v. Interborough Rapid Transit Co., 184 App. Div. 678, 172 N. Y. Supp. 492, affirmed 227 N. Y. 666, 126 N. E. 920; Matter of Schultz v. Champion Welding & Mfg. Co., supra), also where a workman left the employer's premises to go to his home for dinner (Matter of McInerney v. Buffalo & S. R. R. Corp., 225 N. Y. 130, 121 N. E. 806), and where a workman stopped work and went of his own volition to another part of the building in which he was employed, to speak to an employee who was about to leave the place (Di Salvio v. Menihan Co., 225 N. Y. 123, 121 N. E. 766.

The conclusion thus reached renders it unnecessary to pass upon the other questions raised by the appellants.

The order of the Appellate Division and award of the State Industrial Commission should be reversed, and the claim dismissed, with costs against the Industrial Commission in this court and in the Appellate Division.

Order reversed, etc.

NOTE.—*Street Accidents as Compensable Under the Workmen's Compensation Acts.*—In regard to injuries received by employees while using the public streets and highways in the course of their employment, the courts have not formulated any rule of value for determining whether or not the accident or injury arises out of the employment. Many courts have adopted the rule that

when an employee is injured in the street from a cause to which all other persons using the street are likewise exposed, the injury cannot be said to arise out of the employment.

But on the one hand, it has been held that where a solicitor and collector for a life insurance company was injured by a street car while he was running to board another car, in the course of his employment, such injury arose out of the employment, Moran's Case, Mass. (1920), 125 N. E. 591, 5 W. C. L. J. 400, while on the other hand, it has been held that an employee whose duties took him into the streets, and who was injured by slipping on an ice-covered sidewalk while going to board a street car, was not injured by an accident arising out of his employment. Hopkins v. Michigan Sugar Co., 184 Mich. 87, 150 N. W. 325, L. R. A. 1916A, 310, 10 N. C. C. A. 345. See similar holding in Donahue's Case, 226 Mass. 595, 116 N. E. 226, L. R. A. 1918A 215, 14 N. C. C. A. 491.

In another case it appeared that an employee's duties required him to write letters and mail them at a street box, and that while returning to his place of employment, after mailing a letter, he was struck and injured by an automobile. It was held that the injury arose out of his employment, because "the accident was a natural accident of his work resulting from the exposure occasioned by the necessity of his going upon the street while performing such work." Globe Indemnity Co. v. Industrial Acc. Com'n, 36 Cal. App. 280, 171 Pac. 1088, 2 W. C. L. J. 31, 16 N. C. C. A. 907.

Of these cases it is suggested that the Michigan case is entirely wrong, the Massachusetts case partly wrong, and that in the California case the Court has taken the correct view. When the place of work of an employee is the public streets, then the dangers incident to the use of such streets become dangers that are incident to his employment; and the fact that the traveling public generally are equally exposed to such dangers cannot have any bearing upon the question. Those dangers are incident to the employment as matter of fact, and this fact is not changed by dragging into the question extraneous and immaterial facts for the purpose of spinning nice theories. The employee is subjected to the dangers of the street in exactly the same manner in which a factory worker is subjected to the dangers of the factory while in the course of his employment. Nor does it make any difference that the employee is subjected to greater risks of injury bcause they are more constant than those that are incidental to the occasional and casual use of the streets by persons who use them in the ordinary way. It makes no difference whether the risks he is exposed to are more or less than those to which the public generally are exposed. They are dangers peculiar to the place of the employment, and it is of no consequence where that place is. "The causative danger was peculiar to the work, in that, had he not been on the street in the course of his duty, he would not have been injured." Globe Indemnity Co. v. Industrial Acc. Com'n, 36 Cal. App. 280, 171 Pac. 1088, 2 W. C. L. J. 31, 16 N. C. C. A. 907.

However, in order that dangers of this character may be said to be incident to the employment, the work of the employee must take him into the streets; and when he incurs the dangers of the streets for purposes of his own, entirely unconnected with his employment, he cannot recover compensation for injuries resulting therefrom. Balboa Amusement Co. v. Industrial Acc. Com'n, Cal. App., 171 Pac. 108, 1 W. C. L. J. 747, 16 N. C. C. A. 906.

An employee cannot recover compensation for injuries by being struck by an automobile while riding his bicycle home to lunch during noon hour. Taylor v. Binswanger & Co., Va., 107 S. E. 649.

Other cases in point are, Maryland Casualty Co. v. Industrial Acc. Comm., Cal. App., 178 Pac. 542; Consumers' Co. v. Ceislik, Ind. App., 121 N. E. 832; Rogers v. Rogers, Ind. App., 122 N. E. 778; Keaney's Case, Mass., 122 N. E. 739; Haddock v. Edgewater Steel Co., Pa., 106 Atl. 196.

ITEMS OF PROFESSIONAL INTEREST.

THE RECENT MEETING OF THE WISCONSIN STATE BAR ASSOCIATION.

The annual meeting of the Wisconsin State Bar Association was held at Chippewa Falls, with headquarters at the new Hotel Northern, June 23d, 24th and 25th. The meetings were held in the Elks' club rooms, which occupy the entire fifth floor of the hotel. The Chippewa County Bar Association spared no effort to show their hospitality and royally entertained the visiting members of the State Association, special entertainment being provided for the visiting ladies. The meeting is generally conceded to have been one of the most enjoyable and profitable the Association has ever held.

The meeting opened on the morning of June 23rd, with an address of welcome by Hon. James O'Neill, Mayor of Chippewa Falls. This was responded to briefly by President Thompson, who then proceeded to deliver his annual address, the subject of which was "Extension of the Powers of the Bar." This was followed by reports of committees and business.

In the afternoon the following question was presented for discussion:

Is the present method of litigating questions of law and fact before commissions such a departure from the common law theory of trial in open court that it should be either discarded or radically changed; and is such method especially objectionable in connection with existing provisions of appeal?

The discussion of this question was opened for the affirmative by Mr. J. G. Hardgrove of Milwaukee, and Mr. C. T. Bundy of Eau Claire, while Mr. C. D. Jackson of the Railroad Commission, led the discussion on the negative side. Mr. John B. Sanborn of Madison, and

Mr. Henry J. Killilea of Milwaukee, also took part in the discussion.

The afternoon session was followed by an automobile ride to Wissota Dam and through Chippewa's wonderful natural park comprising some 300 acres. Upon the return to the hotel at six o'clock, the members, with their wives and friends, were served with a buffet luncheon at the Elks' club rooms, followed by dancing.

The evening session was held at the Court House, where Dr. F. L. Paxson, Director of the Department of History of the University of Wisconsin, delivered an interesting address on "The Frontier's Influence on the Development of American Law."

On the following day, Ex-Congressman James W. Good, formerly of Cedar Rapids, Iowa, but now practicing law in Chicago, addressed the convention on the subject of "National Finance."

The sessions were brought fittingly to a close by a sumptuous banquet served at the Hotel Northern, attended by about 150 members and their wives. The principal address of the evening was delivered by Hon. Charles S. Cutting of Chicago, upon the "Duty of Bar Associations Toward an Elective Judiciary," in which he set forth in an interesting way the recent situation in Chicago with regard to the election of judges and their control by political factions, and how the bar association there met this difficult situation. Other speakers of the evening were Judge Doerfler of the Wisconsin Supreme Bench, and Mr. B. R. Goggins of Wisconsin Rapids.

Hon. John M. Whitehead, of Janesville, was elected president for the ensuing year, and Gilson G. Glasier, Madison, secretary and treasurer.

CORRESPONDENCE.

EFFECT OF THE "END OF THE WAR" ON THE VOLSTEAD ACT.

Editor, CENTRAL LAW JOURNAL:

Is not the Volstead Law *functus officio ex vi termini*? The opening words of that law are as follows:

"After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, for the purpose of conserving the man-power of the Nation, and to increase efficiency in the production of arms, munitions, ships, food and clothing for the Army and Navy, it shall be unlawful to sell for beverage purposes any distilled spirits."

Barnes' United States Statutes Supplement, Section 8350a, p. 358.

Did not the orders of President Wilson, demobolizing the army, supply the place of a proclamation? The statute does not say in what form the President shall make his proclamation.

I put these questions to you because I am very reliably informed that a proclamation that "The War is Ended" will no doubt be issued; that the delay has been due to deciding upon the form of the proclamation.

My suggestion is, that the only form required is a simple statement declaring the War ended. Whatever legal effect said proclamation may have will depend upon the terms of the legislation upon which it will operate, and that effect will be decided, not by the terms of the proclamation, but by the simple fact that the proclamation has been made, be its language what it may. It will be for the Courts to decide what the legal effect is of the proclamation of the single fact that the "War is ended."

Yours truly,

FREDERICK G. BROMBERG.

Mobile, Ala.

HUMOR OF THE LAW.

"You admit, then," said an Alabama judge, "that you stole the hog?"

"Ah sure has to, judge," said the colored prisoner.

"Well, nigger, there's been a lot of hog stealing going on around here lately, and I'm just going to make an example of you or none of us will be safe."

Rose, the garrulous domestic, can give you facts of history—international, dramatic, scandalous—right off the bat without a moment's hesitation.

"How do you manage to remember all these things, Rose?" inquired her employer the other day.

Then Rose came back with the infallible rule for memory training.

"I'll tell ye, ma'am," says she. "All me life never a lie I've told. And when ye don't have to be taxin' yer memory to be rememberin' what ye told this one or that one, or how ye explained this or that, ye don't overwork it and it lasts ye, good as new, forever."—*New York Sun.*

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub Co., St. Paul, Minn.

1. **Animals** — Cancellation of Registry. — Where, when one became a member of a stock-breeding association, there was a by-law as to tests for advanced registry and canceling certificates of advanced registry, such by-law was part of his contract of membership, and he became bound by it.—Cabana v. Holstein-Friesian Ass'n of America, N. Y., 188 N. Y. S. 277.

2.——Trespassing Stock.—A mere agent in control of the cattle, horses, and mules belonging to his principal is not liable for damages done by such animals in trespassing upon the crops of another, under the principle that an agent is liable to no one except his principal for damages resulting from an omission or neglect of duty in respect to the business of the agency.—Minor v. Dockery, Miss., 88 So. 321.

3. **Attorney and Client** — Constructive Contract.—Where an insurance company refused to avail itself of the services of an attorney in exposing malfeasance by its president, whereupon the attorney presented the matter to the state superintendent of insurance, and procured the president's resignation, the law does not impose on an insurance company any constructive contract obligation to pay the attorney for his services in the matter.—Caldwell v. Missouri State Life Ins. Co., Ark., 230 S. W. 567.

4.——Disrespectful Motion Papers.—Attorneys who submit on motion for reargument motion papers that are impertinent and disrespectful to the court, will be censured and reprimanded, and will be required to pay personally the costs allowed on denial of the motion.—Klein v. Smith, N. Y., 188 N. Y. S. 272.

5.——Inexperience of Attorney.—An attorney, improperly writing a letter to a lady, demanding on behalf of his client the return of a diamond engagement ring and other valuables, with a statement that the recipient of the letter was liable for prosecution, but, if she returned the property, no further proceedings would be taken, censured, but disciplinary proceeding dismissed by reason of his youth and inexperience.—In re Penn, N. Y., 188 N. Y. S. 193.

6. **Bailment**—Burglary.—In action for goods delivered to defendant by plaintiff, to be manufactured for plaintiff, but which were stolen while in defendant's possession, evidence as to a hole in the floor through which the burglars had entered defendant's premises from the cellar, held to rebut presumption that defendant was liable.—Greenberg v. Mermelstein, N. Y., 188 N. Y. S. 250.

7.——Return Shipment. — Where plaintiff shipped goods to defendant company for cleaning and return, the fact that the shipment was by express was an intimation, if not an instruction, that it should be returned by a common carrier who would be responsible for nondelivery, and return by parcels post uninsured, was unauthorized, and the government in its post-office department did not become the agent of plaintiff to render defendant company not liable for loss of the shipment, it having assumed the risk by so shipping without insurance.—Green v. Ben Vonde Co., N. C., 107 S. E. 139.

8. **Bankruptcy**—Discretion of Court. — Under Bankruptcy Act, § 70b (Comp. St., § 9654), requiring property of the bankrupt to be sold subject to the approval of the court when practicable, and not sold otherwise than subject to such approval for less than 75 per cent of its appraised value, the court had discretion to refuse to confirm a sale on the property at public auction, where the best bid was only 41½ per cent of the appraised value.—Bryant v. Charles L. Stockhausen Co., U. S. C. C. A., 271 Fed. 921.

9. **Banks and Banking**—Bill of Lading.—When a bank gives unqualified credit for a draft attached to bill of lading, it becomes the owner thereof, and any funds collected thereon, and is not liable for any failure of the shipment to fulfill the terms of the contract between the seller and the purchaser, under U. S. Comp. St., § 8604.—Farmers' State Bank of Kenefick v. A. F. Hardie & Co., Tex., 230 S. W. 524.

10.——Bill of Lading.—Where a bank issued a letter of credit to honor drafts against bills of lading for certain bags of "Java white granulated sugar," the bill of lading attached to the ensuing draft, describing the sugar as "Java white sugar," did not comply with the terms of the letter of credit, and the bank was not obligated to honor such draft.—Lamborn v. Lake Shore Banking & Trust Co., N. Y., 188 N. Y. S. 162.

11.——Knowledge of Account. — A bank is charged with knowledge of the state of its customer's account on which a check is drawn when it makes an election whether to pay the check or not, and the fact that the account appeared to be good when actually it was not, is immaterial, so that a bank whose bookkeeper falsified an account on which checks were drawn is liable for the acts of its bookkeeper as against an innocent holder of the checks to whom the bank had paid the amounts they called for, and cannot recover such amounts from such holder on any theory that a trust should be declared in the bank's favor on the amounts.—Liberty Trust Co. v. Haggerty., N. J., 113 Atl. 596.

12. **Bills and Notes**—Attorney's Fee.—In an action on a note brought by trustee to whom it had been indorsed, where judgment went for plaintiff, it was proper to enter judgment for attorney's fees, despite defendant's contention that there was no evidence, either that the note had been placed in the hands of an attorney for collection, or that the amount allowed was reasonable.—Gray v. Stolley, Tex., 230 S. W. 866.

13.——Lack of Maturity Date.—That note for amount to be paid as liquidated damages on maker's breach of contract bore no maturity date did not affect its validity, the date of maturity in such case being the date on which maker repudiated the contract, which date was to be ascertained by the evidence.—Nesbitt v. Hudson, Tex., 230 S. W. 747.

14. **Bribery**—"Officer of the United States."—A baggage porter, employed by a railroad under the control of the United States government, was not an officer of the United States, within Criminal Code, § 39, making it an offense to bribe an officer to influence his action.—Krichman v. United States, U. S. S. C., 41 Sup. Ct. 514.

15. **Brokers**—Commission. — An oral understanding at the time of giving a broker a contract to sell land that the purchaser procured by him was already the owner's customer, and that the broker should not attempt to sell him will not prevent recovery of a commission, as the broker's contract in such case was required by the statute of frauds to be in writing, and made no exception as to the persons to be dealt with.—Keith v. Peart, Wash., 197 Pac. 928.

16.——Instant Ability to Purchase.—Where defendant refused to sell land to a purchaser procured by plaintiff solely on the claim that plaintiff had no authority at that time to sell at a price previously fixed, it was not necessary to show, in an action for a commission, that the purchaser had on his person or instantly within reach the amount of cash required to make the purchase.—Crow v. Casady, Ia., 182 N. W. 884.

17. **Carriers of Goods**—Care of Explosives.—Compliance by a carrier with the regulations of the Interstate Commerce Commission in the transportation of explosives does not relieve it from its common-law duty to exercise such additional care as is required by the circumstances of the particular case.—Lehigh Valley R. Co. v. Allied Machinery Co., U. S. C. C. A., 271 Fed. 900.

18.——Damage in Transit.—Under the tariff regulations of a railroad company, providing that carload shipments arriving at its general New York terminal and there neld for further directions, after a stated term, should be subject to demurrage charges, and the liability of the company therefor should be that of warehouseman only, where a car was so held, the liability of the company as carrier held to have reattached on its receipt of an order for forwarding the shipment.—Lehigh Valley R. Co. v. John Lysaght, Limited, U. S. C. C. A., 271 Fed. 906.

19. **Carriers of Passengers** — Negligence. — While a carrier's trainmen have no affirmative duty to ascertain physical condition of a passenger, making it necessary to render special assistance to her in debarking, where the condition is observed or is such that they in the exercise of ordinary care in the discharge of their duties are bound to observe that she requires such assistance, it is their duty to render it.—Payne v. Thurston, Ark., 230 S. W. 561.

20.——Negligence.—Proof that a passenger fell from a train moving at a speed of 40 to 50 miles per hour, and that when he recovered consciousness he was in the hospital suffering from serious injuries, is sufficient to warrant finding his injuries resulted from the fall, without direct tetimony to that effect.—Olivieri v. Hines, U. S. C. C. A., 271 Fed. 939.

21. **Chattel Mortgages**—Conversion. — Where vendor removed grain from land, his act in taking an elevator receipt in the name of himself and purchaser, who had been in possession, was such an admission of title in the purchaser as will carry to the jury an action of conversion by a third person claiming under a chattel mortgage given by the purchaser.—First Nat. Bank v. Montana Emporium Co., Mont., 197 Pac. 994.

22. **Commerce**—Interstate. — A flagman, employed by a railway company which was engaged in both interstate and intrastate commerce, is employed in interstate commerce while engaged in flagging a train, regardless of whether that train was engaged in interstate or intrastate commerce, since his duties were essential to the safety of all trains and therefore his widow cannot recover compensation for his death under the Pennsylvania Workmen's Compensation Law.—Philadelphia & R. Ry. Co. v. Di Donato, U. S. S. C., 41 Sup. Ct. 516.

23. **Constitutional Law** — Ratification of Amendment.—The Eighteenth Amendment to the Constitution, which was to take effect one year after being ratified, became effective on Jan. 16, 1920, which was one year after the consummation of the ratification, though the Secretary of State did not proclaim the ratification until January 29, 1919.—Dillon v. Gloss, U. S. S. C., 41 Sup. Ct. 510.

24. **Corporations**—Authority of Employe. — Letters signed in the name of a corporation by one denominated as field manager are evidence of his authority if in response to communications sent to it.—W. T. Rawleigh Medical Co. v. Woodward, Mo., 230 S. W. 647.

25.——Foreign Corporations.—Where defendant corporations were not authorized to and never had in fact transacted any business in this state, service on their officers temporarily in this state on business of their own was abortive.—Apgar v. Altonna Glass Co., N. J., 113 Atl. 593.

26.——Promoter's Contract.—A promoter's contract to sell stock in consideration of stock to the amount of 10 per cent of the sale price of the stock sold was not binding on the corporation promoted on the theory of ratification, as the corporation itself would not be authorized to make such a contract under Const. art 15, § 10, Rev. Codes, § 3894, as amended by Laws 1917, c. 89, forbidding issue of stock except for labor done, etc., and §§ 3853, 3854, and a ratification is not valid under § 5427, unless at the time of ratifying the principal has power to confer authority for such an act, and, under § 5428, an unauthorized act cannot be made valid, retroactively, to the prejudice of third persons, without their consent.—Kirkup v. Anaconda Amusement Co., Mont., 197 Pac. 1005.

27.——Tort of Former Partnership.—An action in tort cannot be maintained against a corporation on the ground that it afterwards purchased the assets and assumed the liabilities of a partnership which had committed the tort complained of, although the stock of the corporation is owned by the members of the former partnership.—Martin v. Culpeper Supply Co., W. Va., 107 S. E. 183.

28. **Easements**—Obstructions in Way. — Although such road or right-of-way runs partly through other land of the dominant owner, his subsequent purchase of the land constituting the dominant estate, and the vesting of the lesser in the greater estate covering that part of the way, will not extinguish his rights in the other portions of the way and deprive him of his use thereof.—McNeil v. Kennedy, W. Va., 107 S. E. 203.

29. **Eminent Domain**—Market Value.—There is no fixed rule of law whereby the market value of property condemned for public purposes is to be determined by capitalizing the rent reserved in a lease thereof, or what experts consider the reasonable rental value, and there is no fixed rule with respect to the percentage on which such capitalization should be made, nor is it the rule conversely that the fair rental value, to determine the value of a leasehold, may be obtained by assuming that the rental should return a certain percentage on the value of the property.—In re Seventh Ave. and Varick St., N. Y., 188 N. Y. S. 197.

30. **Electricity**—Degree of Care.—A company generating and distributing electricity is bound to exercise the utmost care to see that it does not escape and do injury to those who have a right to be where they are, and who in the performance of their duty might reasonably be expected to be injuriously affected by the current escaping because of the wire coming in contact with other harmless wires in close proximity.—Weddle v. Tarkio Electric & Water Co., Mo., 230 S. W. 386.

31.——Rates.—Under Public Service Commission Law, §§ 71-74, the mere fact that the city of New York, under § 66, subd. 12, had the right to complain, in the general interest of the public, of rates for electric current charged by two generating companies, did not give it the right to come into court in an action brought solely against the companies until it had first exhausted its remedies by complying with § 71 in lodging its complaint with the Public Service Commission, fully empowered to grant relief in proper case.—City of New York v. New York Edison Co., N. Y., 188 N. Y. S. 262.

32. **Exchange of Property** — Rescission.—If defendants induced plaintiff to trade horses by warranting their horse to be sound, when in fact he was not sound and by falsely representing the soundness of their horse with intent to deceive plaintiff, and if representations were not mere traders' talk, the plaintiff was entitled to rescind the trade by tendering back to the defendants their horse, and on defendants' refusal to rescind, plaintiff could bring an action

in detinue and for conversion of his horse.—Ingram & Co. v. Eason, Ala., 88 So. 339.

33. **Frauds, Statute of**—Verbal Lease.—A lessee, who has entered into possession of land under a verbal lease which was not to be performed within one year and has completed the contract, is liable for the rent; and when a lessor has exercised a contractual right to terminate a verbal lease at the end of a yearly period, this constitutes the lease a completed contract, and the mere failure to discharge mutual monetary obligations on a verbal contract otherwise completed does not render such contract unenforceable under the statute of frauds.—Fronkling v. Berry, Miss., 88 So. 331.

34. **Fraudulent Conveyances**—Bulk Sales.—The sale of restaurant fixtures such as tables, chairs, counters, ice boxes, etc., held not within the Bulk Sales Law.—Gallup v. Rhodes, Mo., 230 S. W. 664.

35. **Injunction**—Filing of Petition. — Code, § 4359, providing that no temporary writ of injunction shall be allowed by any judge during term time except the petition therefor be first filed with the clerk and entered on the court calendar, is directory and not mandatory, so that where a petition for injunction was presented to the judge during term time, and the order allowing the temporary injunction was granted without the petition being first filed and entered on the court calendar, the injunction will not be dissolved for such reason.—Denison v. Brotherhood of American Yeomen, Ia., 182 N. W. 873.

36. **Insurance**—Burden of Proof.—In an action on a certificate issued by fraternal insurer, where the deceased member, a private in the army, while on a transport, died from two bullet wounds just above the heart, a finding that death was not the result of suicide or intentional self-destruction, held warranted, in view of the presumption of love of life and the fact that either of the wounds would have proven instantly fatal.—Bear v. Sovereign Camp, W. O. W., Mo., 230 S. W. 369.

37.——Change of Occupation.—A fraternal order's local clerk, through whom only the member might communicate with the ruling officials, and who was required to report the standing of members, was the agent of the order, and a member's duty under the laws of the order to give notice of engagement in a hazardous occupation was complied with by giving notice to such clerk, and where notice was given and no notice of any increase of assessment was ever given, the order was estopped to deny payment of the proper dues, though, as authorized by Crawford & Moses' Dig., § 6095, the laws of the order provided that no officer or agent could waive the provisions of the laws.—Sovereign Camp, W. O. W. v. Key, Ark., 230 S. W. 576.

38.——Fraudulent Representations. — Where insured in his application to a fraternal insurance society stated that he had never been advised to change his residence on account of health, had never had a number of specific diseases, and had not consulted a physician since childhood, the fact that insured, who was passed by defendant's examiner as a first-class risk, was rejected very shortly after by the examiner for another insurance company, does not establish that his representations were fraudulent.—Supreme Tribe of Ben Hur v. York, Colo., 197 Pac. 1012.

39.——Military Service.—An insurance company or benefit society has the right to select the particular risks it is willing to assume, and there is no public policy against a contract exempting insurance company in advance from liability for the death of insured while in the military or naval service of the government, either voluntary or involuntary.—Marks v. Supreme Tribe of Ben Hur, Ky., 230 S. W. 540.

40.——Subrogation.—An insurer of a steamer's cargo, which paid the damage to the shipper after the sinking of tht steamer, and took an assignment of the shipper's cause of action, was thereby subrogated to the shipper's right of action against the ship and its owner.—The Viking, U. S. C. C. A., 271 Fed. 801.

41. **Intoxicating Liquors**—State Statute.—The fact that the state statute imposes penalties for the illegal sale of intoxicating liquor which are different from those in the Volstead Act does not make the state statute void.—People v. Cook, N. Y., 188 N. Y. S. 291.

42.——Sufficient Indictment. — In prosecution for violation of prohibition law, indictment that defendant sold and had in his possession "prohibittd liquors or beverages" held sufficient, as against contention that the liquors were not alleged to have been alcoholic or malt, or some device or substitute therefor.—Roberson v. State, Ala., 88 So. 355.

43. **Landlord and Tenant**—Renewal of Lease —Where there are two tenants, in order that they may make a new contract by exercising an option to renew, it must be done by their united action, either by giving oral or written notice, or by jointly holding over and thus raising the implication they have made such election.—Foster v. Stewart, N. Y., 188 N. Y. S. 151.

44. **Licenses**—Peddlers. — Where employe of foreign corporation engaged in the sale of tea and other merchandise to the retail trade, with no distributing point in the state, divided the city into twelve routes, visited each customer on each route every two weeks and solicited orders for future delivery, sent orders to nearest distributing point, and delivered merchandise and made collection upon receipt of goods from such distributing point, the corporation was not required to pay a license tax for doing business as a peddler with a one-horse wagon.—City of Anniston v. Jewel Tea Co., Ala., 88 So. 351.

45. **Malicious Mischief**—Depositing of Dead Animals.—"Malicious mischief" is any malicious or mischievous injury either to the rights of another or the public in general, and is done in a spirit of wanton cruelty or black and diabolical revenge; and hence the depositing of rotten eggs or dead animals in another's well constitutes malicious mischief at common law.—Johnson v. State, Ala., 88 So. 348.

46. **Master and Servant**—Casual Employment. —One who volunteered to make repairs in a saloon which proved to be a job for a plumber is in an employment both casual and not in the course of his employer's business, so as to be excepted from the Workmen's Compensation Act of 1917 by § 8a thereof.—Roberts v. Industrial Accident Commission, Cal., 197 Pac. 978.

47.——Conclusive Settlement. — An employer cannot repudiate an agreed settlement with a claimant for compensation, in reliance on which the claimant had dismissed her petition for compensation and had taken out letters of administration on her husband's estate, on the ground that the settlement was entered into by the employer without a full knowledge of the facts.—Kuhn v. Pennsylvania R. Co., Pa., 113 Atl. 672.

48.——Course of Employment.—Where, in a dispute concerning the damages to a shipment, plaintiff accused the express driver of lying, and, on the following day, after the damages had been satisfactorily adjusted, the driver armed himself without his employer's knowledge and on return to plaintiff's place of business to obtain a receipt and payment of the express charges, demanded an apology from plaintiff's husband and in connection therewith shot him, the demand for an apology was no part of his employment, and the express company was not liable.—American Ry. Express Co. v. Mackley, Ark., 230 S. W. 598.

49.——Death from Cerebral Hemorrhage Compensable.—Death of an employe, suffering a cerebral hemorrhage while moving a flat car into position in a gravel pit, on a hot day, held compensable; it appearing that the day was one of the hottest of the year and that the radiation from the sand intensified the heat to an unusual degree, and that there was no breeze.—Murray v. H. P. Cummings Const. Co., N. Y., 188 N. Y. S. 193.

50.——Speed of Train.—The engineer of a passenger train going 25 to 30 miles an hour and visible for two miles while approaching a siding occupied by a waiting freight train, with signals indicating clear track, is not bound to anticipate that members of the freight crew will be on the track so as to impose on him the duty to reduce his speed, but he has the right to expect that

they will be in a position of safety and use reasonable diligence in taking such positions.—Sorrell v. Missouri, K. & T. Ry. Co., Tex., 230 S. W. 768.

51. **Mines and Minerals**—Reservation.—Under the settled law of West Virginia that the word "mineral" is not capable of a definition of universal application, but is susceptible of limitation according to the intention of the parties using it to be ascertained from the language of the deed, the relative position of the parties, and the nature of the transaction, where a controversy over the title to land was settled by a conveyance of the land by one party to the other, who was in occupancy of the surface, with a reservation of "all the minerals, mineral substances, and oils of every sort and description," with the right to mine, bore wells, and use so much of the surface as required in operating mines or wells, the reservation held to include natural gas.—Dingess v. Huntington Development & Gas Co., U. S. C. C. A., 271 Fed. 864.

52. **Monopolies**—Fixing Prices.—An attempt by the manufacturer of a patented article, by means of a system of so-called license contracts, which wholesale and retail dealers were required to sign, to control the resale price of such article, after it had sold and received payment for the same, and after such article, under the law as settled by prior decisions of the Supreme Court, by reason of such sales, had been freed from the patent monopoly, held an unlawful restraint of trade, in violation of Anti-Trust Act, § 1.—Victor Talking Mach. Co. v. Kemeny, U. S. C. C. A., 271 Fed. 810.

53. **Municipal Corporations**—Negligence. — A property owner is not estopped from recovering from defendant city damages suffered by him by reason of the city's negligence in making a paving improvement whereby surface water was collected in front of the owner's lot because he petitioned the city with others for the improvement; the petition not being construable as a request to make the improvement without reference to consequences to plaintiff resulting from negligence.—City of Greenville v. McAfee, Tex., 230 S. W. 752.

54. **Negligence**—Slippery Platform.—In an action against a lessee of a store by a customer, who slipped upon a concrete platform at the entrance as she was leaving on a rainy day, held, that there was no evidence to show that defendant was guilty of negligence, where it was not shown that he constructed the platform, or that there had been accidents of a similar kind on other rainy days, due to the slipperiness of the surface, or that slipping was due to the wet condition of the platform or its improper construction.—Schaefer v. De Neergaard, N. Y., 188 N. Y. S. 159.

55. **Physicians and Surgeons**—Negligence.—It is incumbent on a physician to give such instructions as are proper and necessary to enable the patient or his nurses and attendants to act intelligently in the treatment of the case, and a failure to do so is negligence, which will render him liable for injury resulting therefrom.—Everts v. Worrell, Utah, 197 Pac. 1043.

56. **Principal and Agent**—"Contract of Sale."—An order for merchandise, given by plaintiff and signed by one as salesman for defendant, held not to constitute a "contract of sale."—C. F. Bally, Limited v. Quaker City Corporation, U. S. D. C., 271 Fed. 957.

57. **Railroads**—Excessive Charges. — Under Federal Control Act, § 10, allowing actions at law against carriers without defense that the carrier is an instrumentality of the federal government, an action to enforce an order by the Interstate Commerce Commission, requiring the carrier to repay to the shipper excessive charges collected before the government took control, can be maintained against the company during the period of government control.—Vicksburg, S. & P. Ry. Co. v. Anderson-Tully Co., U. S. S. C., 41 Sup. Ct. 524.

58. **Sales**—Breach of Warranty. — Where a contract of sale contains a warranty and provision for a remedy in case of breach, that remedy is exclusive.—J. I. Case Threshing Mach. Co. v. Rose, Ky., 230 S. W. 545.

59.——Measure of Damages.—Where buyer's failure to accept all ties conforming to specifications on seller's delivery of 211,000 feet, and loss of a portion of the ties delivered was the result of confusion caused by seller's delivery of large numbers of ties not conforming to specifications, and seller's noncompliance with provision of contract, requiring delivery with the different grades and dimensions of ties segregated, and stevedores' refusal to handle all of the ties because of such confusion, the fact that some of the ties sent back complied with specifications of the contract, and that some of the ties were lost, did not excuse the seller's failure to make further deliveries.—Stimson Mill Co. v. Rogers, Mylroie Lumber Co., Wash., 197 Pac. 919.

60. **Taxation**—Bequest to City.—A bequest to the city of Duluth, in trust "for the establishment of a free and public hospital," is exempt from the transfer tax; such city being empowered by its charter to receive gifts for such purposes.—In re Miller's Estate, N. Y., 188 N. Y. S. 320.

61.——Increased Value of Stock.—Where the owner of corporate stock in good faith made gift thereof, and the stock had considerably enhanced in value between the first of the year and the date of the gift, the owner is not liable to taxation under the Income Tax Law on account of the increase, for it was of no pecuniary benefit to him.—People v. Wendell, N. Y., 188 N. Y. S. 273.

62.——Movable Property.—Sulphur, which had been removed from underground in a liquid state and allowed to solidify, is not part of the realty, but was properly assessed as movable property, though it was in such large blocks it would have to be blasted before it was loaded for shipment.—Union Sulphur Co. v. Reid, U. S. D. C., 271 Fed. 978.

63. **Tender**—Actual Production Unnecessary.—One tendering money did not have to produce actually the money where there was a refusal to accept the amount offered, which was admitted on the trial.—Murray v. Bryan, N. Y., 188 N. Y. S. 254.

64. **Trusts**—Money on Deposit.—Money deposit payable to mother or daughter, or survivor, held not a trust for mother to daughter for benefit of all the children.—Kauffman v. Edwards, N. J., 113 Atl. 598.

65. **Wills**—Contradictory Provisions.—Under a will: "I give and bequeath to my wife * * * all my personal estate her lifetime or widowhood, at her death or marriage I bequeath to my niece all my estate, both real and personal. * * * I also bequeath to my wife all my real estate, if any there be, at my death"—held, that wife took only life estate in the real estate, and that the niece on the death of the wife took an absolute fee simple estate.—Carey v. Dykes, Md., 113 Atl. 626.

66.——Duty of Witnesses.—The word "attested," used in § 5078, Code of 1906, is broader in meaning than "subscribed," and the purpose of the statute in requiring two witnesses to attest the will is to have more than the mere signatures to the will. It is the duty of the attesting witnesses under the statute to observe and see that the will was executed by the testator; and to observe his capacity to make a will; and where the testator did not sign the will in the presence of one of the witnesses, nor declare his signature, nor identify the paper or signature, nor declare it to be his will, it was improper to instruct the jury that the will was duly and legally executed.—Maxwell v. Lake, Miss., 88 So. 326.

67.——"Heirs."—The word "heirs" within provision of will directing that on son's death "without heirs him surviving" the property bequeathed to the son should become the property of named daughter, held to mean children, not heirs generally, in view of the fact that the ultimate taker, as the son's sister, was his presumptive heir.—Hines v. Reynolds, N. C., 107 S. E. 144.

68. **Witnesses**—Privileged Communications.—An attorney cannot be required to testify concerning communications made to him in that capacity, notwithstanding no objection is made by the client, who, not being a party to the litigation or present at the trial, has no opportunity to consent or to object to the testimony.—O'Brien v. New England Mut. Life Ins. Co., Kan., 197 Pac. 1100.